Choo Boon Lim (trading as CK Consult) v Perwaja Steel Sdn Bhd

HIGH COURT (KUALA LUMPUR) — WRIT OF SUMMONS NO S1-22-544 OF 2001
AZMEL MAAMOR J
26 OCTOBER 2003

Civil Procedure — Summary judgment — Triable issues — Whether proven

The plaintiff claimed for the balance of professional fees for the work he had completed for the defendant. When the defendant refused to the settle the said amount, the plaintiff applied for a summary judgment under O 14 of the RHC which was dismissed on the ground that the defendant had raised triable issues. This was the plaintiff's appeal against the said decision.

Held, allowing the appeal:

(1) The defendant's claim that there was a dispute regarding the plaintiff's scope of work was without merit as the two parties had agreed to the scope of works that was clearly stated in the letter dated 3 January 1994 (see paras 9 and 10).

(2) The relevant local authorities had issued the '*Sijil Perakuan Kelayakan Menduduki Bangunan*' in respect of the relevant projects done by the plaintiff and this dispelled the defendant's contention that the plaintiff had carried out his work unsatisfactorily (see para 12).

(3) The defendant's contention, that the fees claimed by the plaintiff were in excess of the amount allowable under the Engineers Registration Act 1967, was unsustainable. In this action the plaintiff's claiming was below the prescribed amount (see para 14).

(4) The amount paid by the plaintiff to the relevant local authorities was not a fine due as a consequence of negligent work as claimed by the defendant, but was actually a fee for plan submission (see paras 15 and 16).

[**Bahasa Malaysia summary**

Plaintif telah menuntut baki yuran profesionalnya bagi kerja-kerja yang disempurnakan olehnya untuk defendan. Bilamana defendan enggan untuk menyelesaikan jumlah tersebut, plaintif telah memohon untuk penghakiman terus di bawah A 14 KMT yang telah ditolak atas alasan defendan telah memajukan isu-isu yang perlu dibicarakan. Ini adalah rayuan plaintif terhadap keputusan tersebut.

Diputuskan, membenarkan rayuan tersebut:

(1) Aduan defendan bahawa terdapat pertikaian mengenai skop kerja tidak terpakai kerana kedua belah pihak telah bersetuju kepada skop kerja (lihat perenggan 9 dan 10)

(2) Pihak berkuasa berkenaan telah mengeluarkan Sijil Perakuan Kelayakan Menduduki Bangunan berkaitan dengan projek-projek yang disiapkan oleh plaintif dan ini menyangkal aduan defendan bahawa kerja-kerja yang dilakukan oleh plaintif kurang memuaskan (lihat perenggan 12).

(3) Aduan defendan, bahawa yuran yang dituntut oleh plaintif adalah terlebih daripada jumlah yang dibenarkan di bawah Akta Pendaftaran Jurutera 1967, tidak terpakai. Dalam tindakan semasa, tuntutan plaintif berada di bawah jumlah yang dibenarkan (lihat perenggan 14).

(4) Wang yang dibayar oleh plaintif kepada pihak berkuasa berkenaan bukanlah satu saman yang berpunca dari kecuaian seperti yang dimajukan oleh defendan, tetapi sebenarnya merupakan yuran untuk penyerahan pelan (lihat perenggan 15 dan 16).

Notes

For cases on summary judgment, see 2(3) *Mallal's Digest* (4th Ed, 2001 Reissue) paras 6103–6186

Legislation referred to

Engineers Registration Act 1967

Rohaidah (Edwin Lim & Co) for the plaintiff/appellant
(Zainal Rashid & Partners) for the defendant

Azmel Maamor J:

[1] The Plaintiff's claim against the Defendant was for a sum of RM315.000 being the amount of the balance of professional fees for work done. Under Enclosure 4, the Plaintiff had applied for a summary judgment under O 14 of the Rules of the High Court 1980 ('the RHC'). However, the learned Senior Assistant Registrar who originally heard the matter dismissed the Plaintiff's application. As a result, the Plaintiff lodged an appeal against that decision to the Judge in Chambers (Enclosure 9).

[2] The brief facts of the case are as follows. By a letter dated 10 January 1994, the Defendant appointed the Plaintiff as the Consultant for the Defendant's projects, namely:

1. Cadangan Membina Sebuah Kilang Besi Keluli (Section Mill) Diatas Sebahagian Lot 4641, Mukim Gurun, Daerah Kuala Muda, Kedah Darul Aman; dan
2. Cadangan Tambahan Dan Ubahan Kepadc Kilang Besi Keluli (Steel Melting Plant) Yang Sediada, Lot P.T. 1571, Kawasan Perindustrian, Telok Kalong, Kemaman.

[3] This was contained in the Defendant's letter to the Plaintiff dated 10 January 1994 (Exhibit A of Enclosure 4).

[4] The scope of the Plaintiff's work was contained in a letter dated 3 January 1994 sent by the Plaintiff to the Defendant. This letter was in fact produced by the Defendant as exh MLN-1 under Enclosure 6. The contents of the letter states:

Perwaja Steel Sdn. Bhd.
Letter Box No. 86
13th Floor UBN. Tower
10 Jalan P. Ramlee
50250 Kuala Lumpur

Attention : Tan Sri Dato' Eric Chia,

Dear Sir,

PER : 1) CADANGAN MEMBINA SEBUAH KILANG BESI KELULI (SECTION MILL) DIATAS SEBAHAGIAN LOT 4641, MUKIM GURUN, DAERAH KUALA MUDA, KEDAH DARUL AMAN.

2) CADANGAN TAM BAH AN DAN UBAHAN KEPADA KILANG BESI KELULI (STEEL MELTING PLANT) YANG SEDIADA, LOT P.T. 1571, KAWASAN PERINDUSTRIAN TELOK KALONG, KEMAMAN

With reference to the above two projects we are pleased to submit the quotation for submission of drawings to the local authorities made as follows:

Total Fees for both projects	.....	RM500,000.00
Add: 5% service tax	.....	RM 25,000.00
		RM525.000.00

1) Scope of Works

1.1 To submit building plans to the local authorities for approval.

1.2 To make amendments according to the comments of the local authorities and re-submit, and

1.3 To submit civil, steel structure and reinforced concrete drawings together with calculations to the local authorities

2) Schedule of Payment

We propose that the fees shall be paid to us in two stages.

2.1 Upon submission to the local authorities. – 40%

2.2 After second submission, obtaining, approval and submission of civil and structure plans. – 60%

A

We hope our proposal will meet your kind approval.

Thank you.

Yours faithfully,
B C.K. CONSULT

(Signed)
……

B.L. CHOO

C **[5]** There do not appear to be any counter proposals or rejection by the Defendant to the Plaintiff's proposal. As a matter of fact, the Defendant in its letter dated 10 January 1994 stated as follows:

> I refer to your letter CK/9401 & 3/7 dated 3 January 1994 and wish to confirm that you are hereby appointed as consultant for the above project.

D **[6]** Since the Defendant's confirmation made reference to the letter of 3 January 1994, it must be deemed that the contents of the said letter must have been fully accepted by the Defendant.

[7] In his supporting affidavit the Plaintiff enclosed the 'Sijil Perakuan
E Kelayakan Bagi Menduduki Bangunan' from Majlis Perbandaran Sungai Petani Kedah Darul Aman (Exh B of Enclosure 4) and 'Sijil Perakuan Kelayakan Menduduki Bangunan' from Majlis Qaerah Kemaman, Terengganu (Exh C of Enclosure 4). With the issuance of the two Certificates of Occupation issued by the relevant local authorities it would be fair and appropriate to conclude that the Plaintiff had satisfactorily
F carried out his Scope of Works as stipulated in the letter in Exhibit MLN-1 of Enclosure 6. It would also follow that the Plaintiff would be entitled to claim his fees from the Defendant in accordance with the terms of the letter Exh MLN-1 of Enclosure 6. Up to the time of commencement of this action, the Defendant had only paid the sum of RM210,000, being 40% of the total fees. The Plaintiff is now claiming against the Defendant for the
G balance of the unpaid fees amounting to RM315,000. In his supporting affidavit for an application for a summary judgment under O 14, the Plaintiff contended that the Defendant had no valid Defence to the Plaintiff's application.

[8] In objecting to the Plaintiff's application for a summary judgment,
H the Defendant tried to raise certain issues which the Defendant claimed to be triable issues. Firstly, it was contended by the Defendant that the scope of works of the Plaintiff should be in accordance with the guidelines as stated in the Akta Pendaftaran Jurutera 1967. Among the scope of works of which the Plaintiff should be responsible, include the following:

I I. kerja-kerja sivil.

II. kerja-kerja struktur (structural).

III. kerja-kerja infrastruktur.

IV. kerja-kerja elektrik.

V. kerja-kerja mekanikal/ alat pemadan kebakaran.

VI. kerja-kerja perpaipan (plumbing) bekalan air.

VII. pembentungan dan saliran, dan

VIII. talipon.

(See paras 8 and 9 of Enclosure 6).

[9] In disputing the Defendant's contention, the Plaintiff argued that his scope of works had been determined and accepted in accordance with the letter dated 3 January 1994 (Exhibit MLN-1 of Enclosure 6). As this scope of works had not been disputed by the Defendant, and therefore was deemed accepted, the Defendant should not now turn and claim that the Plaintiff's scope of works was not in accordance with Exhibit MLN-1.

[10] In my view there is no merit in the Defendant's contention. Based on the letter MLN-1, I am fully satisfied that the two parties had agreed that the scope of works of the Plaintiff was as what was clearly stated in the letter dated 3 January 1994 (Exhibit MLN-1 of Enclosure 6). As clearly stated, the Plaintiff's appointment by the Defendant was based on the Plaintiff's letter dated 3 January 1994.

[11] Secondly, the Defendant contended that the Plaintiff had failed to carry out his works satisfactorily and not in accordance with the required specifications. In reply the Plaintiff refuted the Defendant's allegation as being without any basis. The Plaintiff further contended that with the issuance of the 'Sijil Perakuan Kelayakan Menduduki Bangunan' by the relevant local authorities in respect of the two projects, there should not be any doubts whatsoever that the Plaintiff had carried out its scope of works satisfactorily. In other words, whatever building plans and structural plans that were required to be submitted for approval to the local authorities must have been satisfactorily done. Otherwise the 'Sijil Perakuan Kelayakan Menduduki Bangunan' would not have been issued.

[12] After having carefully considered this issue I am quite satisfied that the Plaintiff had carried out its scope of works as stated in the letter of 3 January 1994. This is based on the fact that the relevant local authorities had issued the 'Sijil Perakuan Kelayakan Menduduki Bangunan' in respect of the said two projects. As such, the issue raised by the Defendant would have no basis whatsoever.

[13] Thirdly, the Defendant claimed that the whole fees claimable by the Plaintiff should only be RM150,000 and not RM500,000. The Defendant further contended that based on the guidelines as stated in Akta Pendaftaran Jurutera 1967 the Plaintiff should only be entitled to claim a maximum fee of RM150,000 only. The Defendant had overpaid the Plaintiff in excess of RM60,000.

[14] In reply, the Plaintiff said that if the Plaintiff's scope of works was actually based on the guidelines as stated in the Akta Pendaftaran Jurutera 1967, then the Plaintiff's fees would have been very much higher. The

estimated value of each of the two projects was RM100 million and the Plaintiff's fees would come to almost RM4 million for each project. Based on the total estimated value of the two projects at RM200,000,000 the Plaintiff's fees would be RM7,950,750. In such circumstances it would not be in the best interests of the Defendant to say that the scope of works of the Plaintiff was based on the Akta Pendaftaran Jurutera. In this action the Plaintiff was only claiming a fee of RM500,000. Such being the circumstances, I was of the view that it would be in the best interests of the Defendant not to raise this issue at all.

[15] Finally, the Defendant alleged that the Plaintiff had committed an act of negligence by delaying in submitting the plans to the relevant local authorities thereby causing the Defendant to pay a fine of RM6.650 for the late submission.

[16] In reply the Plaintiff claimed that there was no truth in the Defendant's allegation. The Plaintiff explained that the payment of RM6.650 was not a fine, but actually a fee for plan submission. This is confirmed by the letter from Majlis Perbandaran Sungai Petani dated 19 May 1996 (See Exh MNL-2 – Enclosure 6). After having examined the contents of the said letter, I agree with the Plaintiff that there was no truth in the Defendant's allegation. It would appear that this is a desperate attempt by the Defendant to raise a triable issue, pathetically done, I must say.

[17] In the circumstances and for the reasons as I have stated above, I have arrived at the conclusion that the Defendant has failed to raise any triable issues to the Plaintiff's claim. I therefore allow the Plaintiff's claim. The decision of the learned Senior Assistant Registrar is hereby reversed. I also order costs of this hearing to the Plaintiff.

Plaintiff's appeal for summary judgment granted with costs.

Reported by AG Kalidas